

In the absence of fraud, this section has no application where the plaintiff in a pending suit assigns her interest in the prospective judgment to her counsel as trustee, with certain directions as to the distribution of the proceeds. *United Rys., etc., Co., v. Rowe*, 97 Md. 658.

This section has no application to trustees appointed by will. *Philbin v. Thurn*, 103 Md. 346.

This section applies only to the suretyship of natural persons. *Gans v. Carter*, 77 Md. 9. And see *Herzberg v. Warfield*, 76 Md. 450.

Generally.

A deed of trust under this section comes within the general registration laws of this state, and the place of record is governed accordingly. If the deed and bond are recorded in the wrong place, the property is subject to attachment in the hands of the trustee. *Steifel v. Barton*, 73 Md. 410 (decided prior to the act of 1892, ch. 241).

Where property is attached between the date of the record of a deed of trust and the filing of the bond under this section, the attachment is valid; *contra* if the attachment is laid after the record of the deed and the filing of the bond. *White v. Pittsburg Bank*, 80 Md. 5; *Fidelity Co. v. Haines*, 78 Md. 457. And see *Steifel v. Barton*, 73 Md. 410.

The bond of a surety company authorized by an act amending its charter to become sole surety, upheld under this section. *Miller v. Matthews*, 87 Md. 477; *Gans v. Carter*, 77 Md. 7. And see *Herzberg v. Warfield*, 76 Md. 450.

Change made in this section by the act of 1900, ch. 114. This section referred to in construing section 238—see notes thereto. *Union Trust Co. v. Ward*, 100 Md. 100.

For cases involving section 116 of article 81 of the code of 1860 (analogous in some of its provisions to this section), see *Sixth Ward Bldg. Assn. v. Willson*, 41 Md. 512; *Reeside v. Peter*, 33 Md. 127; *Withers v. Denmead*, 22 Md. 146; *Furlong v. Edwards*, 3 Md. 90.

1904, art. 16, sec. 222. 1900, ch. 114, sec. 205 A.

238. When any estate, real, personal or mixed shall be limited or conveyed to any trustee as security for debt, or to be sold upon a contingency, it shall not be necessary for such trustee to file a bond until after the contingency happens, or a sale is about to be made in pursuance of the power contained in the deed or instrument creating the trust, and every such trustee before making sale shall file with the clerk of the court in which the deed or instrument creating the trust is recorded a bond in such penalty as the clerk may prescribe, being as nearly as can be ascertained double the amount of the trust estate, and with sureties to be approved by the clerk, conditioned for the faithful performance of the trust reposed in such trustee, which bond shall be retained and recorded in the office of the said clerk, and shall report all sales made by him to the court of equity having jurisdiction in the premises, in the same manner and subject to the same rules as are required and prescribed in relation to sales made in pursuance of decrees of courts of equity in this State; and no sale made by any such trustee without such bond shall be valid or pass any title to such property or estate. If the trust estate consists of real property, or of real and personal property, situated partly in the county or city in which the grantor resides, and partly in one or more other counties, it shall be sufficient that a bond has been accepted and filed in the county of the grantor's residence; if the trust estate consists entirely of real estate, in a county or counties other than of the residence of the grantor.